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THE CITY OF SAN DIEGO

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GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 3:54 PM

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R & T 11/22 (Amended)
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(For County Recorder's Use Only)

COVENANT TO RESTRICT USE OF PROPERTY ENVIRONMENTAL RESTRICTION

THIS COVENANT AND AGREEMENT (Covenant) is made the 18 day of December, 2002, by and between Maria Guerrero as Trustee of the Maria Guerrero Declaration of Trust dated July **18, 2002** [Covenantor or Owner], whose address is **2953 38th Street**, San Diego, California, and the City of San Diego. Pursuant to Civil Code section 1471(c), the City has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and the City, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant. The Parties further intend that the provisions of this Covenant also be for the benefit of, and be enforceable by, the Department of Toxic Substances Control, California Environmental Protection Agency (DTSC), as a third party beneficiary, based upon the following facts:

WHEREAS, Maria Guerrero as Trustee of the Maria Guerrero Declaration of Trust dated July **18, 2002** [Owner] owns all that real property located at **2953 38th Street**, in the City of San Diego, County of San Diego, State of California [APN: **454-61 1-40**] [Premises]; and

WHEREAS, burn ash has been detected on, at, and/or under the Premises (See Site Characterization Report and Human Health Screening Former Quince Street Burn Site, **38th**, 39th and Quince Streets, San Diego, California dated March 27, 2002, maintained by the City of San Diego Solid Waste Facility Local Enforcement Agency); and

WHEREAS, the burn ash may contain hazardous substances, including, but not limited to, lead; and

WHEREAS, burn ash sites are regulated in the State of California as solid waste disposal sites; and

WHEREAS, this Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Premises and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restrictions: (a) runs with the land pursuant to Civil Code section **1471**; (b) inures to the benefit of and passes with each and every portion of the Premises, (c) is for the benefit of, and is enforceable by the City and DTSC, and (d) is imposed upon the entire Premises unless expressly stated as applicable only to a specific portion thereof; and

WHEREAS, the City further concludes that the Premises, as remediated, and subject to the Restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment; and

WHEREAS, pursuant to Civil Code section 1471(b), all successive owners of the Premises are expressly bound hereby for the benefit of the City; NOW, THEREFORE,

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the Owner grants to the City of San Diego, a municipal corporation, in the County of San Diego, State of California, its successors and assigns, this Covenant, and do, for themselves, their heirs, successors, lessees, agents, employees, and assigns, declare, covenant, and agree:

1. Development on the Premises shall be restricted as follows:

- a. Prohibited Activities: On the Premises, there shall be no activities or projects that may result in digging, trenching, penetration and/or excavation of soil below the "Concrete Foundation of the Structure" (as defined in 1.a(i) below) and/or below three (3) feet beneath ground surface in the "Restricted Unpaved Areas" (as defined in 1.a(ii) below) and/or below three (3) feet beneath ground surface in the "New Concrete Pavement" area (as defined in 1.a(iii) below) without the express written approval of the City of San Diego Solid Waste Facility Local Enforcement Agency or its successor agency. Prohibited projects and activities may include, but are not limited to, subsurface swimming pools, spas or jacuzzis; utility trenches; landscape ponds or water features; foundations and/or footings for any construction work including, but not limited to, room additions, garage additions, basements, decks, gazebos, porches, walkways, play equipment, garden plots, patios and/or shade structures; planting holes for trees and shrubs; drainage facilities or systems; and footings and/or post holes for fences.
- (i) For purposes of this Covenant "Concrete Foundation of the Structure" means that portion of the Premises which serves as the foundation of the enclosed portion of the existing dwelling. The "Concrete Foundation of the Structure" also includes all existing hardscape improvements such as patios, driveways, slabs, retaining walls, and walkways which are contiguous to or adjoining the existing dwelling, and all such hardscape improvements adjoining or contiguous to them, except for the "New Concrete Pavement." The "Concrete Foundation of the Structure" is depicted in the plot plan attached hereto as Exhibit "1."
- (ii) For purposes of this Covenant "Restricted Unpaved Areas" means all that portion of the Premises excluding the "Concrete Foundation of the Structure" and the "New Concrete Pavement" and as depicted in the plot plan attached hereto as Exhibit "1."
- (iii) For purposes of this Covenant, "New Concrete Pavement" means that portion of the Premises directly to the west of and contiguous to the "Concrete Foundation of the Structure" and as depicted in the plot plan attached hereto as Exhibit "1."
- b. Exceptions: Notwithstanding the prohibitions described in section 1.a, above, this Covenant shall not apply to activities or projects, in violation of the above prohibited activities, which are necessary for the upgrade, replacement, repair or maintenance of the various utilities that exist at, or run through, over, or under the Premises. Should the Owners of the Premises determine or be advised that a utility upgrade, replacement, repair or maintenance project at the Premises is required and may result in penetrations of the ground surface beyond the depths allowed in this Covenant, the Owners shall so notify the City of San Diego Solid Waste Facility Local Enforcement Agency or its successor agency in writing and obtain its prior written approval before proceeding with any such activity or project.

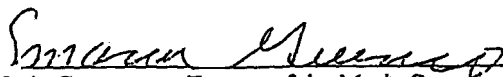
2. Agencies authorized by applicable Local, State and/or Federal regulations governing burn ash sites, and acting in enforcement of such regulations shall have access to the Premises upon reasonable notice while such applicable regulations remain in existence.

3. All fees associated with required inspections of the Premises, by regulatory agencies enforcing regulations governing solid waste or other regulations associated with ash or burn dumps, shall be borne by the City of San Diego.

Date:

12-19-02

By:


Maria Guerrero as Trustee of the Maria Guerrero
Declaration of Trust dated July 18, 2002

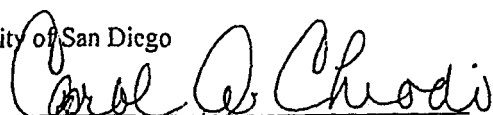
This is to certify that the interest in real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego, pursuant to authority conferred by Resolution No. R-296273, adopted by the Council of the City of San Diego on April 9, 2002, and the grantee consents to recordation thereof by its duly authorized officer.

Date:

1/23/03

For City of San Diego

By:


B. Lane MacKenzie

Acting Deputy Director, Real Estate Assets Department

NOTE: NOTARY ACKNOWLEDGMENTS (FOR ALL SIGNATURES) MUST BE ATTACHED, PER CIVIL CODE SEC. 1180 ET. SEQ.

PLOT PLAN



APPROXIMATE SCALE
0 15 30

1 IN. = 15 FEET

Drawn: 12/12/02

Ref: **Block** 143, Lot 5,6 &7, Map 1007, City Heights Amended
Right of Way Map, L.O.-45087

FOR REFERENCE PURPOSES ONLY

Covenant to Restrict Use of Property Environmental Restriction Exhibit "1"

2953 38th Street

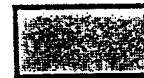
APN: 454-611-40

LEGEND

NEW CONCRETE
PAVEMENT



RESTRICTED
UNPAVED
AREAS



PROPERTY LINE



CONCRETE
FOUNDATION
OF THE
STRUCTURE



2959 38th Street

CONCRETE FOUNDATION
OF THE STRUCTURE

2933 38th Street

38th Street (Alley)

Right of Way - City of San Diego

Highway 14 SD-15

XI,

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Diego

} ss.

On December 19, 2002 before me, Roselyn Sears Barton

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Maria Guerrero

Name(s) of Signer(s)

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Roselyn Sears Barton
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER

Signer Is Representing: _____